



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. J. Townsend
County Attorney
Angelina County
Lufkin, Texas

Dear Sir:

Opinion No. 0-5790
Re: Is it lawful for a newspaper in a dry area to carry advertisements of alcoholic beverages?

This acknowledges receipt of your letter of recent date which reads:

"I beg leave to advise that Angelina County is a dry area, where the sale of intoxicating liquors have been inhibited by local option law adopted by the voters of the county.

"Is it lawful for local newspapers in Lufkin, the County site of Angelina County, a dry area, to carry whiskey ads in the local newspapers?"

We find the following Texas statutes which pertain to the advertisement of alcoholic beverages.

Article 667-24a 3, V.A.P.C., provides in part:

"It shall be unlawful for any person to erect or maintain any billboard or electric sign within an area or zone where the sale of alcoholic beverages is prohibited by law." (Emphasis added).

Article 667-24a 1, V.A.P.C., provides in part:

"The term 'outdoor advertising' shall not be inclusive of any advertising appearing in a newspaper, magazine, or other literary publication published periodically." (Emphasis added).

Honorable W. J. Townsend - Page 2

Since both of the above statutes are included within the general section 667-24a, under the heading "Outdoor Advertising", we believe it to be readily apparent that these statutes place a restriction upon outdoor advertising only, and that the latter statute specifically exempts advertisements in newspapers from such restriction.

Article 667-24 (1) (h), V.A.P.C., provides in part:

"It shall be unlawful for any manufacturer or distributor directly or indirectly, or through a subsidiary or affiliate, any agent or any employee, or by any other officer, director, or firm member: To publish or disseminate in any newspaper, periodical or other publication any advertisement of any brewery product, if such advertisement causes, or is reasonably calculated to cause, deception of the consumer with respect to the product advertised. An advertisement shall be deemed misleading if it is untrue in any particular or if directly or by ambiguity, omission, or inference, it tends to create a misleading impression."
(Emphasis added).

A reading of the above statute clearly indicates that it has reference solely to advertising which tends to deceive the consumer as to the product itself, that is, as to its quality, et cetera.

Article 3, V.A.P.C., provides in part that "no person shall be punished for any act or omission, unless the same is made a penal offense, and a penalty is affixed thereto by the written law of this State", and we find no statutory provision which would operate to prohibit advertisement of alcoholic beverages in a newspaper in a dry area.

In view of the foregoing it is, therefore, the opinion of this department that a newspaper in a dry area can lawfully carry advertisements of alcoholic beverages.

Honorable W. J. Townsend - Page 3

We trust that the foregoing fully answers your question.

Yours very truly

ATTORNEY GENERAL OF TEXAS



By

William E. Stapp
William E. Stapp
Assistant

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